

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1519 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

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KOLI JIVANBHAI ALIAS BHAGAT GOVINDBHAI

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 1519 of 2001
MS DR KACHHAVAH for Petitioner No. 1
MR K.T.DAVE, AGP for Respondent No. 1-3
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CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 28/08/2001

ORAL JUDGEMENT

By filing this petition under Article 226 of the Constitution, petitioner/detenu who has been detained by the District Magistrate, Bhavnagar vide order dated December 20, 2000 (Annexure-A to the petition) in

exercise of the powers conferred under sub-Section 2 of Section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 ('the Act' for short hereinafter), has assailed the order of detention on various grounds and prayed to issue writ of habeas corpus or any other appropriate writ or order quashing and setting aside the impugned order of detention and further prayed to set him at liberty forthwith.

2. The grounds of detention order dated December 20, 2000 manifest that the petitioner is a prohibition bootlegger within the meaning of Section 2(b) of the Act and two cases under Prohibition Act are registered against him. Therefore, according to the detaining authority his activities are detrimental to public order. The sponsoring authority has recorded the statements of four witnesses on December 5, 2000 which were verified by the superior authority on December 7, 2000 and then by the detaining authority on December 18, 2000 and immediately after two days thereafter that is, on December 20, 2001 the detaining authority has passed the order of detention.

3. The petitioner has challenged the detention order on various grounds. However, Ms D R Kachhava, learned Advocate for the petitioner has stated that the detaining authority has not supplied the legible copies of the documents relied upon by him while passing the impugned order and on this ground alone this petition deserves to be allowed as the right of the petitioner to make the effective representation is jeopardized. In support of her aforesaid contention, reliance is placed in the case of Vikramsinh Vs. State of Gujarat-1988(2) GLH page 414. She, therefore, urges to allow the petition by issuing a writ as prayed for and the petitioner may be set at liberty forthwith.

4. Mr. K.T.Dave, learned AGP has opposed this petition. He, however, does not dispute the factual aspect about non-supplying of the legible copies of the documents. He, therefore, urged that in the light of settled principles enunciated by this Court, appropriate orders may be passed.

5. I have considered the submissions advanced by the learned Advocates appearing for the parties. I have also perused the averments made in the petition as well as the impugned order of detention and the documents annexed therewith. I have also perused the original file produced by learned AGP during the course of his submissions.

6. On having perusal of the record of the case and the original file, there is no manner of doubt that at page no. 60 some of the words are illegible, likewise on other pages also some of the words are missing as well as illegible. Therefore, there is a reason to hold that in absence of legible copies the petitioner's right to make an effective representation has been prejudiced.

7. A similar question arose before the Division Bench of this Court in the case of Vikramsinh (supra) wherein this Court has held that; if some of the pages of the judgement supplied to the detenu are not legible, it would tantamount to non-communication of ground and, therefore, detention order is liable to be quashed.

8. Applying the aforesaid principle laid down by the Division Bench of this Court to the facts of the present case, at the cost of repetition be it stated that some of the pages are illegible and therefore the petitioner's right to make an effective representation is prejudiced as he could not make the effective representation before the authority and on this sole ground, the petition deserves to be allowed.

9. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention dated December 20, 2000 is hereby quashed and set aside. The petitioner/detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute with no order as to costs. Direct service is permitted.

(A.M.Kapadia, J)
Jayanti*